

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

LESTER J. SMITH,

Plaintiff,

vs.

Warden CARL HUMPHREY, et. al.

Defendants.

:
:
:
:
:
:
:
:

CASE NO: 5:12-CV-0015-MTT-CWH

ORDER

Plaintiff Lester J. Smith has filed a motion to proceed *in forma pauperis* on appeal from the Court's February 28, 2014, Order (Doc. 199) granting summary judgment in favor of Defendants. In the Court's best judgment, an appeal from that Order cannot be taken in good faith. See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."); Fed. R. App. P. 24(a)(3) ("A party who was permitted to proceed *in forma pauperis* in the district-court action . . . may proceed on appeal *in forma pauperis* . . . unless . . . the district court . . . certifies that the appeal is not taken in good faith").

Furthermore, as shown by Defendants (Doc. 205) and confirmed by a review of court records on the U.S. District Web PACER Docket Report, Plaintiff has now accumulated three "strikes" under section 28 U.C.S. § 1915(g): See *Smith v. Hart*, 5:12-cv-033 (S.D. Ga. 2012) (dismissing complaint), and Appeal No. 12-14201-E (11th Cir. 2013) (dismissing appeal); *Smith v. Humphrey*, Appeal No. 12-13178-C (11th Cir. 2013) (dismissing appeal). Because of these dismissals, Plaintiff may not proceed *in forma pauperis* on appeal unless he can show that he qualifies for the "imminent danger of serious physical injury" exception of § 1915(g). Plaintiff's Motion does not allege the existence of any such danger.

For these reasons, Plaintiff's Motion to Proceed *in forma pauperis* on appeal (Doc. 204) is **DENIED**. If Plaintiff wishes to proceed with his appeal, he must pay the entire \$505.00 appellate filing fee. Because Plaintiff has stated that he cannot pay the \$505.00 immediately, he must pay using the partial payment plan described under 28 U.S.C. § 1915(b). Pursuant to § 1915(b), the prison account custodian where Plaintiff is incarcerated shall cause to be remitted to the Clerk of this Court monthly payments of 20% of the preceding month's income credited to Plaintiff's account until the \$505.00 appellate filing fee has been paid in full. Twenty percent of any deposits into the prisoner's account shall be withheld by the prison account custodian who, on a monthly basis, shall forward the amount withheld from the prisoner's account to the Clerk of this Court each time the amount in the account exceeds \$10.00 until the total filing fee of \$505.00 has been paid. Checks should be made payable to "Clerk, U.S. District Court."

The Clerk of Court is **DIRECTED** to mail a copy of this Order to the custodian of the prison in which Plaintiff is incarcerated.

Any further requests to proceed *in forma pauperis* on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED, this 21st day of April, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

jlr